

中华人民共和国反不正当竞争法（2019 年修订）

Anti-Unfair Competition Law of the People's Republic of China (Revised in 2019)

中华人民共和国主席令第 29 号 2019 年 4 月 23 日

Order of the President of the People's Republic of China No. 29 April 23, 2019

（1993 年 9 月 2 日第八届全国人民代表大会常务委员会第三次会议通过；2017 年 11 月 4 日第十二届全国人民代表大会常务委员会第三十次会议修订；2019 年 4 月 23 日第十三届全国人民代表大会常务委员会第十次会议修订）

(Adopted at the Third Session of the Standing Committee of the Eighth National People's Congress on September 2, 1993, and revised for the first time at the 30th Session of the Standing Committee of the 12th National People's Congress on November 4, 2017; and revised for the second time at the Tenth Session of the Standing Committee of the 13th National People's Congress on April 23, 2019)

目 录

Content

第一章 总则

Chapter I General Provisions

第二章 不正当竞争行为

Chapter II Unfair Competition Acts

第三章 对涉嫌不正当竞争行为的调查

Chapter III Investigations into Suspected Unfair Competition Acts

第四章 法律责任

Chapter IV Legal Liability

第五章 附则

Chapter V Supplementary Provisions

第一章 总 则 Chapter I General Provisions

第一条 为了促进社会主义市场经济健康发展，鼓励和保护公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益，制定本法。

Article 1 This Law is formulated with a view to promoting the healthy development of the socialist market economy, encouraging and protecting fair competition, preventing acts of unfair competition, and protecting the legitimate rights and interests of business operators and consumers.

第二条 经营者在生产经营活动中，应当遵循自愿、平等、公平、诚信的原则，遵守法律和商业道德。

本法所称的不正当竞争行为，是指经营者在生产经营活动中，违反本法规定，扰乱市场竞争秩序，损害其他经营者或者消费者的合法权益的行为。

本法所称的经营者，是指从事商品生产、经营或者提供服务（以下所称商品包括服务）的自然人、法人和非法人组织。

Article 2 While carrying out production or business activities, a business operator shall follow the principles of voluntariness, equality, fairness, and good faith, abide by laws and observe business ethics.

For the purpose of this Law, unfair competition refers to any business operator's act of participating in the production and operation activities in violation of the provisions herein to disrupt the competition order in the market and infringe the legitimate rights and interests of other business operators or consumers.

For the purpose of this Law, a business operator refers to a natural or legal person or any other unincorporated association engaged in the manufacturing or trading of commodities or the provision of services ("commodities" referred to hereinafter include services).

第三条 各级人民政府应当采取措施，制止不正当竞争行为，为公平竞争创造良好的环境和条件。

国务院建立反不正当竞争工作协调机制，研究决定反不正当竞争重大政策，协调处理维护市场竞争秩序的重大问题。

Article 3 People's governments at various levels shall take measures to prevent acts of unfair competition and create a favorable environment and conditions for fair competition.

The State Council shall establish an anti-unfair competition work coordination mechanism, study and decide on major anti-unfair competition policies, and coordinate and deal with major issues to maintain the competition order.

第四条 县级以上人民政府履行工商行政管理职责的部门对不正当竞争行为进行查处；法律、行政法规规定由其他部门查处的，依照其规定。

Article 4 The department responsible for administration for industry and commerce under a people's government at or above the county level shall investigate and deal with acts of unfair competition. Where laws or administrative regulations provide that such acts shall be investigated and handled by another department, those provisions shall apply.

第五条 国家鼓励、支持和保护一切组织和个人对不正当竞争行为进行社会监督。

国家机关及其工作人员不得支持、包庇不正当竞争行为。

行业组织应当加强行业自律，引导、规范会员依法竞争，维护市场竞争秩序。

Article 5 The State encourages, supports and protects all organizations and individuals in the exercise of social supervision over unfair competition acts.

State organs and their staff members shall not support or cover up any unfair competition conduct.

Industry organizations shall strengthen industry self-discipline, guide and regulate their members to compete according to the law, and maintain the competition order in the market.

第二章 不正当竞争行为 Chapter II Unfair Competition Acts

第六条 经营者不得实施下列混淆行为，引人误认为是他人商品或者与他人存在特定联系：

（一）擅自使用与他人有一定影响的商品名称、包装、装潢等相同或者近似的标识；

（二）擅自使用他人有一定影响的企业名称（包括简称、字号等）、社会组织名称（包括简称等）、姓名（包括笔名、艺名、译名等）；

（三）擅自使用他人有一定影响的域名主体部分、网站名称、网页等；

（四）其他足以引人误认为是他人商品或者与他人存在特定联系的混淆行为。

Article 6 A business operator shall not perform any of the following confusing acts that will enable people to mistake its products for another business's products or believe certain relations exist between its products and any business's products,

1. unauthorized use of a mark that is identical or similar to the name, packaging or decoration of another business's commodity, which has influence to a certain extent,

2. unauthorized use of another business's corporate name (including its shortened name, trade name, etc.), the name of a social group (including its shortened name, etc.), or the name of an individual (including his or her pen name, stage name, translated name, etc.), which has influence to a certain extent;
3. unauthorized use of the main domain name, website name or webpage, which has influence to a certain extent; and
4. other confusing acts that are sufficient to enable people to mistake its products for another business's products or believe certain relations exist between its products and any business's products.

第七条 经营者不得采用财物或者其他手段贿赂下列单位或者个人，以谋取交易机会或者竞争优势：

- (一) 交易相对方的工作人员；
- (二) 受交易相对方委托办理相关事务的单位或者个人；
- (三) 利用职权或者影响力影响交易的单位或者个人。

经营者在交易活动中，可以以明示方式向交易相对方支付折扣，或者向中间人支付佣金。经营者向交易相对方支付折扣、向中间人支付佣金的，应当如实入账。接受折扣、佣金的经营者也应当如实入账。

经营者的工作人员进行贿赂的，应当认定为经营者的行为；但是，经营者有证据证明该工作人员的行为与为经营者谋取交易机会或者竞争优势无关的除外。

Article 7 A business operator shall not resort to bribery, by offering money or goods or by any other means, to any of the following entities or individuals, in order to seek a transaction opportunity or competitive advantage,

1. any employee of the counterparty in a transaction;
2. any entity or individual entrusted by the counterparty in a transaction to handle relevant affairs; or
3. any other entity or individual that is to take advantage of powers or influence to influence a transaction.

A business operator may expressly give a discount to the counterparty or pay a commission to the middleman of a transaction in the course of transaction activities. Where a business operator gives a discount to the transaction counterparty or pays a commission to the middleman, it shall truthfully enter it in his account books. A business operator that accepts such discount or commission shall also enter it into its account books.

The act of an employee of a business operator bribing any other individual shall be deemed an act of the business operator itself, unless otherwise proven by the business operator with evidence that such act is not related to efforts in seeking a transaction opportunity or competitive advantage.

第八条 经营者不得对其商品的性能、功能、质量、销售状况、用户评价、曾获荣誉等作虚假或者引人误解的商业宣传，欺骗、误导消费者。

经营者不得通过组织虚假交易等方式，帮助其他经营者进行虚假或者引人误解的商业宣传。

Article 8 A business operator shall not conduct commercial promotions for the performance, function, quality, sales status, user evaluation, honor received concerning its products in a false or misleading manner, attempting to cheat or mislead consumers.

A business operator shall not assist another business operator with its commercial promotions in a false or misleading manner by way of organizing false transactions or by other means.

第九条 经营者不得实施下列侵犯商业秘密的行为：

（一）以盗窃、贿赂、欺诈、胁迫、电子侵入或者其他不正当手段获取权利人的商业秘密；

（二）披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；

（三）违反保密义务或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密；

（四）教唆、引诱、帮助他人违反保密义务或者违反权利人有关保守商业秘密的要求，获取、披露、使用或者允许他人使用权利人的商业秘密。

经营者以外的其他自然人、法人和非法人组织实施前款所列违法行为的，视为侵犯商业秘密。

第三人明知或者应知商业秘密权利人的员工、前员工或者其他单位、个人实施本条第一款所列违法行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为侵犯商业秘密。

本法所称的商业秘密，是指不为公众所知悉、具有商业价值并经权利人采取相应保密措施的技术信息、经营信息等商业信息。

Article 9 A business operator shall not engage in any of the following infringements of commercial secrets:

1. obtaining an obligee's commercial secrets by theft, bribery, intimidation, electronic intrusion or other improper means;
2. disclosing, using, or allowing others to use an obligee's commercial secrets obtained by the means mentioned in the preceding paragraph; or
3. disclosing, using or allowing others to use an obligee's commercial secrets in violation of confidentiality obligations or the obligee's requirements on keeping such commercial secrets confidential.
4. obtaining, disclosing, using or allowing any other to use an obligee's commercial secrets by instigating, tempting or helping any other to violate the confidentiality obligations or the obligee's requirements on keeping such commercial secrets confidential.

Other natural persons, legal persons and unincorporated organizations other than the business operators who commit the illegal acts listed in the preceding paragraph shall be deemed as infringement of commercial secrets.

Where a third party knows or should know of the fact that an employee or former employee of the right owner of commercial secrets or any other entity or individual conducts any of the illegal acts specified in the first paragraph of this article, but still accepts, publishes, uses or allows any other to use such secrets, such practice shall be deemed as infringement of commercial secrets.

For the purpose of this Law, commercial secrets refer to any technical information, operational information or commercial information which is not known to the public and has commercial value, and for which its obligee has adopted measures to ensure its confidentiality.

第十条 经营者进行有奖销售不得存在下列情形：

- （一）所设奖的种类、兑奖条件、奖金金额或者奖品等有奖销售信息不明确，影响兑奖；
- （二）采用谎称有奖或者故意让内定人员中奖的欺骗方式进行有奖销售；
- （三）抽奖式的有奖销售，最高奖的金额超过五万元。

Article 10 The prize-attached sale activities of a business operator shall not involve the following situations:

1. making sales with prizes attached without expressly specifying the prize types, terms for collecting prizes, the amounts of cash or the goods as prizes, or other related information that will affect the collection of prizes;
2. making sales with prizes attached in a fraudulent manner by falsely claiming the

existence of prizes or intentionally causing internally-chosen persons to win the prizes; and

3. making sales with prizes attached in the form of a lucky draw where the amount of the highest prize exceeds CNY50, 000.

第十一条 经营者不得编造、传播虚假信息或者误导性信息，损害竞争对手的商业信誉、商品声誉。

Article 11 A business operator shall not fabricate or disseminate any false information or misleading information to injure the credit standing of its rival or the reputation of its rival's commodities.

第十二条 经营者利用网络从事生产经营活动，应当遵守本法的各项规定。

经营者不得利用技术手段，通过影响用户选择或者其他方式，实施下列妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的行为：

（一）未经其他经营者同意，在其合法提供的网络产品或者服务中，插入链接、强制进行目标跳转；

（二）误导、欺骗、强迫用户修改、关闭、卸载其他经营者合法提供的网络产品或者服务；

（三）恶意对其他经营者合法提供的网络产品或者服务实施不兼容；

（四）其他妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的行为。

Article 12 A business operator that makes use of the network to engage in production and business activities shall abide by all the provisions herein.

It shall not perform any of the following acts that impede or disrupt the normal operation of network products or services legally provided by other business operators, by taking advantage of technical means to influence users' choices or otherwise,

1. inserting a link into a network product or service legally provided by another operator to compel a destination jump without the approval of such operator;

2. misleading, deceiving or compelling users into modifying, closing, or uninstalling a network product or service legally provided by another business operator;

3. implementing in bad faith an incompatibility with a network product or service legally provided by another business operator; or

4. any other act that impedes or disrupts the normal operation of network products or

services legally provided by another business operator.

第三章 对涉嫌不正当竞争行为的调查 Chapter III Investigations into Suspected Unfair Competition Acts

第十三条 监督检查部门调查涉嫌不正当竞争行为，可以采取下列措施：

- （一）进入涉嫌不正当竞争行为的经营场所进行检查；
- （二）询问被调查的经营者、利害关系人及其他有关单位、个人，要求其说明有关情况或者提供与被调查行为有关的其他资料；
- （三）查询、复制与涉嫌不正当竞争行为有关的协议、账簿、单据、文件、记录、业务函电和其他资料；
- （四）查封、扣押与涉嫌不正当竞争行为有关的财物；
- （五）查询涉嫌不正当竞争行为的经营者的银行账户。

采取前款规定的措施，应当向监督检查部门主要负责人书面报告，并经批准。采取前款第四项、第五项规定的措施，应当向设区的市级以上人民政府监督检查部门主要负责人书面报告，并经批准。

监督检查部门调查涉嫌不正当竞争行为，应当遵守《中华人民共和国行政强制法》和其他有关法律、行政法规的规定，并应当将查处结果及时向社会公开。

Article 13 The supervision and inspection authorities may adopt any of the following measures to investigate suspected unfair competition conduct,

1. accessing the business premises involved in a suspected unfair competition act for inspection;
2. questioning the business operator under investigation, any interested party, or any other related entity or individual, and requiring them to explain relevant situations or provide other materials in relation to the investigated act;
3. inquiring into and copying the contracts and agreements, account books, vouchers, documents, records, business correspondence and other materials related to a suspected unfair competition act;
4. sealing up and/or detaining the property involved in a suspected unfair competition act; and
5. inquiring into the bank account of a business operator that is suspected of an unfair competition act.

Before any measure specified in the preceding paragraph is adopted, a written report shall be submitted to the principal of the supervision and inspection authority for his or her approval. Where the measure specified in Item 4 or Item 5 of the preceding paragraph is to be adopted, a written report shall be submitted to the principal of the supervision and inspection authority under the people's government at or above the level of a city with district division for his or her approval.

The supervision and inspection authorities shall abide by the Administrative Coercion Law of the People's Republic of China and other applicable laws and administrative regulations while looking into suspected unfair competition acts, and disclose the investigation and handling results to the public in a timely manner.

第十四条 监督检查部门调查涉嫌不正当竞争行为，被调查的经营者、利害关系人及其他有关单位、个人应当如实提供有关资料或者情况。

Article 14 The business operators subject to investigation, interested parties, and other related entities or individuals, shall truthfully provide the relevant materials or information when the supervision and inspection authorities are investigating suspected unfair competition conduct.

第十五条 监督检查部门及其工作人员对调查过程中知悉的商业秘密负有保密义务。

Article 15 The supervision and inspection authorities and their staff members shall keep confidential any commercial secrets known to them during the investigations.

第十六条 对涉嫌不正当竞争行为，任何单位和个人有权向监督检查部门举报，监督检查部门接到举报后应当依法及时处理。

监督检查部门应当向社会公开受理举报的电话、信箱或者电子邮件地址，并为举报人保密。对实名举报并提供相关事实和证据的，监督检查部门应当将处理结果告知举报人。

Article 16 Any entity or individual shall have the right to report any suspected unfair competition acts to the supervision and inspection authority. The supervision and inspection authority shall promptly deal with such reports according to the law upon receipt of these reports.

The supervision and inspection authorities shall make available to the public the phone numbers, mailing addresses or email addresses for such reports and keep the identities of informants confidential. For real-name informants who present evidence for their claims, the supervision and inspection authorities shall inform them of the handling results.

第四章 法律责任 Chapter IV Legal Liability

第十七条 经营者违反本法规定，给他人造成损害的，应当依法承担民事责任。

经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

因不正当竞争行为受到损害的经营者的赔偿数额，按照其因被侵权所受到的实际损失确定；实际损失难以计算的，按照侵权人因侵权所获得的利益确定。经营者恶意实施侵犯商业秘密行为，情节严重的，可以在按照上述方法确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额还应当包括经营者为制止侵权行为所支付的合理开支。

经营者违反本法第六条、第九条规定，权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益难以确定的，由人民法院根据侵权行为的情节判决给予权利人五百万元以下的赔偿。

Article 17 A business operator that violates this Law and thus causes damage to others shall bear civil liability for such damage in accordance with the law.

A business operator whose lawful rights and interests are infringed by an unfair competition act may file a lawsuit with a people's court.

The amount of compensation for damage caused by any unfair competition act to a business operator shall be determined depending on the actual losses suffered by such operator as a result of the infringement; where it is truly difficult to work out the actual losses, such amount shall be determined in accordance with the benefits obtained by the infringer from the infringement. Where a business operator is maliciously engaged in the infringement of commercial secrets, if the circumstance is serious, the amount of compensation may be determined between one time to five times the amount determined according to the above method. The amount of compensation shall also include the reasonable expenses paid by the damaged business operator to stop the infringement.

Where a business operator violates the provisions stipulated in Article 6 or Article 9 herein, and it is truly difficult to determine the actual losses suffered by the obligee as a result of the infringement or the benefits obtained by the infringer from the infringement, the people's court shall award the obligee less than CNY5 million in damages, depending on the seriousness of the infringement.

第十八条 经营者违反本法第六条规定实施混淆行为的，由监督检查部门责令停止违法行为，没收违法商品。违法经营额五万元以上的，可以并处违法经营额五倍以下的罚款；没有违法经营额或者违法经营额不足五万元的，可以并处二

十五万元以下的罚款。情节严重的，吊销营业执照。

经营者登记的企业名称违反本法第六条规定的，应当及时办理名称变更登记；名称变更前，由原企业登记机关以统一社会信用代码代替其名称。

Article 18 Where a business operator violates Article 6 herein by performing any confusing act, the supervision and inspection authority shall order it to cease the offense, and confiscate its illicit commodities. If the illicit turnover exceeds CNY50,000, it shall be fined up to five times the illicit turnover. If there is no illicit turnover or the illicit turnover is less than CNY50,000, it shall be fined up to CNY250,000; where the circumstance is serious, its business license shall be revoked.

Where a corporate name registered under a business operator violates the provisions of Article 6 herein, the business operator shall go through formalities to change its registered corporate name promptly. Prior to the change of the corporate name, the original corporate registration authority shall use the unified social credit code in lieu of its corporate name.

第十九条 经营者违反本法第七条规定贿赂他人的，由监督检查部门没收违法所得，处十万元以上三百万元以下的罚款。情节严重的，吊销营业执照。

Article 19 Where a business operator bribes any other party in violation of Article 7 herein, the supervision and inspection authority shall confiscate its illegal gains, and impose on it a fine of between CNY100,000 and CNY3 million. Where the circumstance is serious, its business license shall be revoked.

第二十条 经营者违反本法第八条规定对其商品作虚假或者引人误解的商业宣传，或者通过组织虚假交易等方式帮助其他经营者进行虚假或者引人误解的商业宣传的，由监督检查部门责令停止违法行为，处二十万元以上一百万元以下的罚款；情节严重的，处一百万元以上二百万元以下的罚款，可以吊销营业执照。

经营者违反本法第八条规定，属于发布虚假广告的，依照《中华人民共和国广告法》的规定处罚。

Article 20 Where a business operator violates the provisions of Article 8 herein to conduct commercial promotions for its commodities in a false or misleading manner, or assists other business operators with commercial promotions in a false or misleading manner by way of organizing false transactions or by other means, the supervision and inspection authority shall order the business operator to cease its violations and impose on it a fine of between CNY200,000 and CNY1 million; where the circumstance is serious, it shall be fined between CNY1 million and CNY2 million, and its business license may be revoked.

Where a business operator's violation of Article 8 herein constitutes the releasing of a false advertisement, it shall be punished according to the Advertising Law of the People's Republic of China.

第二十一条 经营者以及其他自然人、法人和非法人组织违反本法第九条规定侵犯商业秘密的，由监督检查部门责令停止违法行为，没收违法所得，处十万元以上一百万元以下的罚款；情节严重的，处五十万元以上五百万元以下的罚款。

Article 21 Where a business operator or any other natural person, legal person or unincorporated organization infringes any commercial secret in violation of Article 9 herein, the supervision and inspection authority shall order it to cease the illegal act, confiscated the illegal gains and impose on it a fine of between CNY100, 000 and CNY1 million; where the circumstance is serious, the fine shall be between CNY500, 000 and CNY5 million.

第二十二条 经营者违反本法第十条规定进行有奖销售的，由监督检查部门责令停止违法行为，处五万元以上五十万元以下的罚款。

Article 22 Where a business operator makes a prize-attached sale in violation of Article 10 herein, the supervision and inspection authority shall order it to cease the illegal act and impose on it a fine of between CNY50, 000 and CNY500, 000.

第二十三条 经营者违反本法第十一条规定损害竞争对手商业信誉、商品声誉的，由监督检查部门责令停止违法行为、消除影响，处十万元以上五十万元以下的罚款；情节严重的，处五十万元以上三百万元以下的罚款。

Article 23 Where a business operator causes injury to the credit standing of its rivals or the reputation of its rivals' commodities in violation of Article 11 herein, the supervision and inspection authority shall order it to cease the illegal act and eliminate any bad influences, and impose on it a fine of between CNY100, 000 and CNY500, 000; where the circumstance is serious, the fine shall be between CNY500, 000 and CNY3 million.

第二十四条 经营者违反本法第十二条规定妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的，由监督检查部门责令停止违法行为，处十万元以上五十万元以下的罚款；情节严重的，处五十万元以上三百万元以下的罚款。

Article 24 Where a business operator impedes or disrupts the normal operation of network products or services legally provided by another business operator, in violation of Article 12 herein, the supervision and inspection authority shall order it to cease the illegal act and impose on it a fine of between CNY100, 000 and CNY500, 000; where the circumstance is serious, the fine shall be between CNY500, 000 and

CNY3 million.

第二十五条 经营者违反本法规定从事不正当竞争，有主动消除或者减轻违法行为危害后果等法定情形的，依法从轻或者减轻行政处罚；违法行为轻微并及时纠正，没有造成危害后果的，不予行政处罚。

Article 25 Where a business operator performs any unfair competition act in violation of the provisions herein, and if such operator proactively eliminates or relieves the harmful consequence of its illegal act, it shall be subject to a lighter or mitigated administrative penalty; if the illegal act is considered as a minor violation and is corrected in a timely manner without leading to any harmful consequence, it may not be subject to an administrative penalty.

第二十六条 经营者违反本法规定从事不正当竞争，受到行政处罚的，由监督检查部门记入信用记录，并依照有关法律、行政法规的规定予以公示。

Article 26 Where a business operator is subject to the administrative penalty for performing an unfair competition act in violation of this Law, the supervision and inspection authority shall enter such penalty in its credit record and publicly disclose the same in accordance with the relevant laws or administrative regulations.

第二十七条 经营者违反本法规定，应当承担民事责任、行政责任和刑事责任，其财产不足以支付的，优先用于承担民事责任。

Article 27 Where a business operator shall bear civil liability, administrative liability and criminal liability as a result of its violation of the provisions herein, but its property is not sufficient to cover all the damages, the civil liability shall take precedence.

第二十八条 妨害监督检查部门依照本法履行职责，拒绝、阻碍调查的，由监督检查部门责令改正，对个人可以处五千元以下的罚款，对单位可以处五万元以下的罚款，并可以由公安机关依法给予治安管理处罚。

Article 28 Where a party obstructs the efforts of the supervision and inspection authority to fulfill its duties according to this Law, refusing or impeding the investigations, the supervision and inspection authority shall order it to make corrections, and impose a fine of up to CNY5, 000 if the party is an individual, or a fine of up to CNY50, 000 if the party is an entity, and the public security organ may impose a public security punishment according to the law.

第二十九条 当事人对监督检查部门作出的决定不服的，可以依法申请行政复议或者提起行政诉讼。

Article 29 Where the party concerned disagrees with the decision made by the

supervision and inspection authority, it may apply for administrative reconsideration or file an administrative lawsuit.

第三十条 监督检查部门的工作人员滥用职权、玩忽职守、徇私舞弊或者泄露调查过程中知悉的商业秘密的，依法给予处分。

Article 30 Where any staff member of a supervision and inspection authority abuses powers, neglects duties, commits malpractices or reveals any commercial secrets known during the investigations, such staff member shall be subject to punishment in accordance with the law.

第三十一条 违反本法规定，构成犯罪的，依法追究刑事责任。

Article 31 Where any violation of this Law constitutes a crime, there shall be an investigation for criminal liability.

第三十二条 在侵犯商业秘密的民事审判程序中，商业秘密权利人提供初步证据，证明其已经对所主张的商业秘密采取保密措施，且合理表明商业秘密被侵犯，涉嫌侵权人应当证明权利人所主张的商业秘密不属于本法规定的商业秘密。

商业秘密权利人提供初步证据合理表明商业秘密被侵犯，且提供以下证据之一的，涉嫌侵权人应当证明其不存在侵犯商业秘密的行为：

（一）有证据表明涉嫌侵权人有渠道或者机会获取商业秘密，且其使用的信息与该商业秘密实质上相同；

（二）有证据表明商业秘密已经被涉嫌侵权人披露、使用或者有被披露、使用的风险；

（三）有其他证据表明商业秘密被涉嫌侵权人侵犯。

Article 32 During the civil trial of infringement cases of commercial secrets, where the preliminary evidence provided by an obligee of commercial secrets can prove that it has taken measures to keep confidentiality of its such commercial secrets and can reasonably indicate that such commercial secrets have been infringed, the alleged infringer shall prove that the commercial secrets claimed by the obligee do not fall with the scope of commercial secrets as provided in this Law.

Where the obligee of commercial secrets provides preliminary evidence that can reasonably indicate the commercial secrets have been infringed and provides one of the following evidence, the alleged infringer shall prove that there is no infringement of any commercial secret:

1. there is evidence showing that the alleged infringer has access to or opportunities to

obtain such commercial secrets and the information used by the alleged infringer is substantially identical to such commercial secrets;

2. there is evidence showing that such commercial secrets have been or have the possibility of being published or used by the alleged infringer;

3. there is any other evidence showing that such commercial secrets have been infringed by the alleged infringer.

第五章 附则 Chapter V Supplementary Provisions

第三十三条 本法自 2018 年 1 月 1 日施行。

Article 33 This Law shall come into force as of January 1, 2018.